Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996	)	CC Docket No. 97-11

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these reply comments on the Commission's NPRM[1] proposing revisions to the policies and rules implementing Section 214 of the Communications Act, 47 U.S.C. § 214, as amended by Section 402(b)(2)(A) of the Telecommunications Act of 1996 ("1996 Act").[2]

INTRODUCTION AND SUMMARY

The comments present no arguments that require the Commission fundamentally to alter the revisions to its § 214 rules proposed in the NPRM. Also, although several commenters

1 Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, CC Docket No. 97-11, Notice of Proposed Rulemaking, FCC 97-6, released January 13, 1997 ("NPRM").

2 A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments.

request that the Commission forbear from imposing certain of its rules, none of these parties even attempts to make the showing § 10 requires for such relief.

The Commission should modify its proposal for § 214 discontinuances in two respects, as AT&T demonstrated in its comments. First, because they remain monopoly providers of access services throughout most of their territories, ILECs have the ability to injure interexchange carriers by suddenly withdrawing, reducing or discontinuing essential access services for which alternative suppliers are not readily available. Therefore, the current § 63.71 presumption that the Commission "will normally authorize" service discontinuances should not extend to dominant carriers. Second, the Commission should eliminate the burdensome and unnecessary requirement that nondominant carriers provide written notice to all customers affected by a proposed service discontinuance.

ARGUMENT

As AT&T stated in its comments, it does not object to the Commission's proposal to apply current § 63.71 notice procedures to dominant carriers' discontinuance of service. However, retention of the requirement for advance written notice to affected customers is critical to protect customers that purchase access services from incumbent LECs, the only dominant carriers in the nation's telecommunications markets. ILECs' access customers could find their ability to provide interexchange services jeopardized if an ILEC suddenly withdrew, reduced or discontinued essential access services for which alternative suppliers were not readily available. Because of this threat, the Commission should not extend to dominant carriers the presumption afforded to nondominant carriers in current § 63.71 that the Commission "will normally authorize" service discontinuances.

Although some commenters seek to obscure the fact, even going so far as to claim that "ratepayers no longer are captive" despite ILECs' continuing monopoly over local exchange service,[3] it is beyond cavil that ILECs currently possess significant market power, and will continue to do so for the foreseeable future. The 1996 Act did not instantly transmogrify incumbent LECs' longstanding monopolies into competitive markets. This inescapable fact dooms the ILECs' unsupported claims that regulation of dominant and nondominant carriers should be "symmetrical." Demands for equivalent regulatory treatment that merely recite the refrain that the 1996 Act is "procompetitive and deregulatory" do not offer a valid rationale for permitting carriers to exercise unchecked market power; nor do they provide a basis for forbearance under § 10.

By proposing that dominant carriers be required to give 60 days notice of planned service discontinuances, the Commission recognizes that ILECs should be subject to more stringent regulation under § 214 than are nondominant carriers. Most ILEC commenters that address notice periods support this proposal,[4] with the dissenters offering only the tired argument that all carriers should be "subject to the same regulatory obligations," without addressing the ILECs' unquestioned ability to exercise market power.[5]

In contrast, as AT&T showed in its comments, there is no reasonable possibility that any customer of a nondominant IXC, CAP or CLEC could make the showing required to

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3 Ameritech, p. 5.

4 See BellSouth, p. 11; PacTel, p. 12; U S West, p. 7.

5 Ameritech, p. 17; see also USTA, p. 8; SWBT, p. 6.

forestall a discontinuance of service under § 63.71. Accordingly, there is no justification for continuing to require nondominant carriers to bear the burden of identifying potentially affected customers and notifying each of them in writing prior to a service discontinuance.[6]

Southwestern Bell argues that the Commission should forbear from enforcing all § 214 discontinuance notification requirements, because such regulation is "no longer needed in a competitive marketplace."[7] As a preliminary matter, its comments make no effort to demonstrate that the § 10 forbearance requirements have been satisfied, and so can and should be rejected on that basis alone. More importantly, it simply blinks reality for an ILEC monopolist such as Southwestern Bell blandly to assert that the local exchange marketplace in its territory is "competitive."

Without so much as attempting to demonstrate that the § 10 criteria have been satisfied, U S West also seeks forbearance for all § 214 regulations for any sales of exchanges which have been approved by the relevant state PUC and for which there will be no interruption of service.[8] As support for its proposal, U S West offers only that it previously received a blanket § 214 authorization for transfers involving up to 1,000 lines. This fact is patently inadequate to satisfy § 10, even as to such smaller transactions. Moreover, even if U S West had attempted the requisite showing, its request would not be a proper subject for forbearance. Past sales of exchanges by U S West have raised significant issues concerning study area waivers and universal

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6 <u>See</u> AT&T, pp. 3-6.

7 SWBT, p. 4.

8 U S West, pp. 9-10.

service funding. Future sales -- particularly the larger transactions U S West appears to be contemplating -- will likely be contentious as well. At a minimum, the request is premature. The Commission is in the midst of redesigning the current access charge and universal service schemes. As a result of this redesign, the sales of exchanges U S West addresses could implicate pricing, consumer protection and the public interest in as yet unforeseen ways, and so should not simply be waived through the § 214 process.[9]

Two commenters, GTE and TLD, contend that § 402(b)(2)(A) requires that construction of new international lines be exempted from § 214 review.[10] However, as the NPRM recognizes, the Commission has long held that "the initiation of service to a new foreign point raises an array of issues not associated with the expansion of service within the domestic United States" and is therefore "fundamentally different in character."[11] AT&T strongly supports the Commission's tentative conclusion that both a carrier's expansion of capacity on an existing international line and the initiation of service to a new foreign point must be deemed a "new" line subject to § 214 review.

The NPRM correctly concludes that because § 214 refers to construction of both a "new line" and of an "extension of any line," those terms should be construed so as to give each phrase independent meaning. Section 402(b)(2)(A) exempts carriers from § 214 exclusively for "the extension of any line." To adopt the suggestions of some commenters that "extensions"

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9 See 47 U.S.C. § 10(a).

10 See GTE, p. 6; TLD, pp. 1-11.

11 NPRM, ¶ 31, 32 (collecting authorities).

should be construed to include construction of all lines impermissibly would render the statutory term "new line" surplusage.[12] The plain language of § 402(b)(2)(A) indicates that Congress did not intend to exempt all construction of all lines from the reach of § 214; the legislature easily could have referred to both extensions and new lines had it wished. Indeed, the fact that it the 1996 Act does not exempt "new lines" from § 214 review unequivocally demonstrates Congress' intent that construction of some lines remains subject to § 214 review.

As both the NPRM's discussion of the issue and the divergent views of the commenters demonstrate, neither the Commission's precedents nor relevant judicial decisions give definitive guidance as to the distinction between extensions and new lines. Moreover, as the NPRM finds, past § 214 practice never necessitated that these definitions be clarified,[13] and the terms "extension" and "new line" have thus been used in imprecise fashion to describe a variety of projects.[14] Accordingly, the Commission must apply its informed judgment to give reasonable content to "extension of any line," as that phrase is used in § 402(b)(2)(A).[15]

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12 See, e.g., Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. 552, 562 (1990) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment.").

13 See NPRM, ¶ 5.

14 Thus, collections of citations, such as that offered by TLD, in which the Commission described a given class of construction efforts as "extensions" are ultimately not probative, because those decisions never purported to define the scope of that term vis a vis "new lines."

15 See generally, e.g., Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984). If the Commission adopts its tentative conclusion to forbear from § 214 review in the vast majority of cases, then most of the commenters' disagreements over the meaning of "extension of any line" will be mooted in any event.

The NPRM tentatively concludes, consistent with its interpretation of § 402(b)(2)(A) in the domestic context, that "projects that increase a carrier's capacity to carry traffic between the United States and another country it already serves" constitute "new lines" for purposes of § 214 review.[16] This approach follows naturally from the Commission's conclusion that the statutory phrase "extension of a line" refers to construction that extends a carrier's network into an area it does not currently serve, while projects that increase capacity within the area a carrier already serves should be regarded as a "new line."[17]

The NPRM also proposes that "extensions" excluded from § 214 review by § 402(b)(2)(A) are limited to projects that allow a carrier "to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach."[18] Because the Commission has long held that the "international geographic market exists in terms of separate and distinct areas determined by national borders"[19] and has imposed specific and searching review before granting a carrier initial authority to acquire and operate facilities to a particular country, the NPRM correctly reasons that the initiation of international service should not be deemed an "extension" of service, but rather a "new" service that is outside the scope of

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16 NPRM, ¶ 34. See also id., ¶ 21 (tentatively concluding "projects that increase the capabilities of a [domestic] carrier's existing network within an area it already serves" should be considered "new lines").

17 See id., ¶ 21.

18 Id. (emphasis added).

19 Id., ¶ 32 (quoting International Competitive Carrier Policies, Report and Order, 102 F.C.C.2d 812, 829 (1985)).

§ 402(b)(2)(A), because carriers should not be deemed to "extend" their lines into nations they have not yet been granted permission to serve. This conclusion plainly is a reasonable reading of § 214, as amended by the 1996 Act. While Congress sought to open the U.S. domestic telecommunications markets to competition, it certainly did not intend to "unilaterally disarm" domestic carriers that might otherwise face unfair competition from international providers that benefit from state-protected monopolies in their own markets.[20]

Finally, GTE offers a brief and unsupported argument that the Commission should forbear from requiring § 214 authorizations for "any new lines outside a LEC's territory," and should hold that the ILEC will be regarded as nondominant in that area.[21] GTE also contends that an ILEC operating outside its current territory should not be required to comply with separations requirements.[22] Once again, these requests for forbearance do not even purport to show compliance with the specific requirements of § 10, and so must be rejected. In addition, GTE's request that ILECs be regarded as nondominant when they construct lines outside their current

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20 See, e.g., Market Entry and Regulation of Foreign Affiliated Entities, Report and Order, IB Docket No. 95-22, FCC 95-475, released November 30, 1995, ¶¶ 12-14 (recognizing that competition is developing at different rates in different countries, and that foreign carriers must be prevented from leveraging monopoly power derived from their home markets into the U.S. market).

21 GTE, pp. 8-9.

22 Id.

territories goes far beyond the scope of the instant proceeding, and could not be granted without affording interested parties a fuller opportunity to comment.[23]

Further, GTE's assertion that any ILEC building lines in an area outside its territory is, in effect, a CLEC is almost surely incorrect. If GTE or another ILEC were to construct new local exchange facilities in areas adjacent to its current monopoly strongholds, it would have numerous significant advantages over other potential entrants, and could potentially engage in virtually all of the anticompetitive activities that are possible within its current service area. In contrast, facilities constructed in more distant areas might present less substantial risks. In any case, the Commission cannot possibly adequately evaluate GTE's claim in this proceeding. GTE's argument for forbearance from separations requirements is likewise beyond the scope of the instant rulemaking. Indeed, the Commission recently rejected a similar request by NYNEX that it forbear from enforcing separations requirements on the ground that it did not present a proper subject for forbearance, and announced its intention to begin a rulemaking on separations reform at a future date.[24]

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23 See, e.g., Home Box Office, Inc. v. FCC, 567 F.2d 9, 55 (D.C. Cir.) (proposed rule must provide sufficient information to permit informed "adversarial critique"), cert. denied, 434 U.S. 829 (1977).

24 See New England Telephone and Telegraph Company and New York Telephone Company Petition for Forbearance From Jurisdictional Separations Rules, Order, AAD 96-66, FCC 97-54, released February 20, 1997, ¶¶ 12, 16.

CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission's proposal revising its rules implementing § 214 of the Communications Act should be modified prior to adoption.

Respectfully submitted,

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March 17, 1997

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 17th day of March, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

Terri Yannotta

March 17, 1997

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(CC Docket No. 97-11)

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BellSouth Corporation and BellSouth Telecommunications, Inc.

Digital Network Services, Inc.

GTE Service Corporation ("GTE")

Independent Telephone & Telecommunications Alliance

MCI Communications Corporation

Pacific Telesis Group

Southwestern Bell Telephone Company ("SWBT")

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